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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,780	08/08/2005	Harald Keller	275181US0PCT	5352

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EXAMINER	
SCHIRO, RYAN RAYMOND	
ART UNIT	PAPER NUMBER
1792	

NOTIFICATION DATE	DELIVERY MODE
04/20/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/544,780	KELLER ET AL.	
	Examiner	Art Unit	
	RYAN SCHIRO	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 January 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8,10 and 12-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,10 and 12-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *02/01/07 and 08/08/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 16-18 have been added by the amendment filed 01/29/2009. Claims 1-8, 10 and 12-18 are pending and presented for examination.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-8, 10, 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waeber et al. (US 2005/0066448) in view of Kim et al. ("Preparation of ethylene-modified latex using ethylene-acrylic acid resin").

4. Waeber teaches a method for applying a finishing layer to a textile support material (abstract). Waeber also teaches a textile material that is coated with the finishing layer, as required by claim 7 (claims 19-22). The finishing layer is an aqueous mixture (0036) and can include crosslinked natural or synthetic hydroxyl, carbonyl, amino or thiol group containing

polymers onto the textile material (0027). Hydrophobic silica particles, which are inorganic solids, having an average particle size of 5-100 nm are also set into the finishing layer, as required by claims 1, 2, 4, 6, 8, 10 and 12 (0034). The hydrophilic silica particles are present in the liquor in a fraction of 1.5-5 g/L, as required by claims 17 and 18 (Examples 1-8). Emulsifying of the finishing components is effected using a rapidly rotating stirrer or high-pressure mixing systems (0025). A primer layer is formed on the textile surface before the water repellent layer is deposited for means of bonding the water repellent layer to the textile material, as required by claim 3 (0036). Examples 6-8 of Waeber teach that isopropanol is included in the composition as a solvent, as required by claim 13 (0049, 0053, 0056). Examples 1-8 taught in Waeber (0036-0058) have drying periods and temperatures around the same time periods and temperatures as the drying described in Applicant's specification. Therefore, it is inherent that the water-fraction is substantially low enough in Waeber to fall within or close to the 0-15% range since the drying periods and temperatures are the same, required by claims 14 and 15.

5. Waeber does not teach that an emulsifier is specifically included in the aqueous finishing liquor or that the solids are present in a 5.5-7 g/L amount.

6. Kim is drawn to the use of an ethylene-acrylic acid resin (EAA) as an emulsifier with organic polymers, such as polystyrene or polymethacrylate, as required by claims 1, 8, 10, 12 and 16 (Introduction).

7. It would have been obvious to a person ordinarily skilled in the art at the time of the invention to combine the teachings of Waeber, an organic polymer-solid material aqueous solution for finishing textile materials which is emulsified, with an emulsifier comprised of EAA that is used with organic polymers, as taught by Kim to make an organic polymer-solid material

aqueous solution with an EAA emulsifier. One would have been motivated to combine the composition of Waeber with the emulsifier of Kim because addition of the EAA would save time in preparing the coating composition of Waeber by eliminating mechanical stirring or mixing to emulsify the composition. Also, one would have been motivated to combine the teachings of Waeber and Kim because it is stated in Kim that the water permeability of the polymer films decreased as the concentration of ethylene-acrylic acid increase, which is a further object of the teachings of Waeber.

8. It would have been obvious to a person ordinarily skilled in the art at the time of the invention that the solid could be in the aqueous composition in a fraction of 5.5-7 g/L, 0.1-100 g/L or 0.2-10 g/L, as required by claims 1, 5, 8, 10, 17 and 18. It is well settled in the determination of the optimum values for such as the solid fraction in the aqueous liquor is within the skill of one practicing in the art. *In re Boesch,* 205 USPQ 215 (CCPA 1980).

Response to Arguments

9. In response to applicant's argument that there is no suggestion to combine the Waeber and Kim references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the addition of the EAA would save time in preparing the coating composition of Waeber by eliminating mechanical stirring or mixing to

emulsify the composition. Also, one would have been motivated to combine the teachings of Waeber and Kim because it is stated in Kim that the water permeability of the polymer films decreased as the concentration of ethylene-acrylic acid increase when used with methacrylates (p. 513, Conclusion), which are used in Waeber as the polymeric material.

10. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the mechanical strength of the textiles obtained are improved) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

Claims 1-8, 10 and 12-18 are rejected.

Applicant's amendment necessitated the new grounds of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Schiro whose telephone number is 571-270-5345. The examiner can normally be reached on Monday-Friday from 8:30 AM to 6 PM.
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached at 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ryan Schiro
Art unit 1792

/Michael Barr/

Supervisory Patent Examiner, Art Unit 1792